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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,794	06/11/2001	John M. Krochta	02307O-114410US	3739

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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER	
PADEN, CAROLYN A	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Application No. 09/879,794	Applicant(s) KROCHTA ET AL.	
	Examiner Carolyn A Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21,23,24 and 31* is/are rejected.

7)☒ Claim(s) *22, 25-30* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Applicant traversed the restriction requirement on the grounds that that the search in all of the inventive areas would not require an inordinate amount of time. Upon further consideration, all of the requirements for restriction advanced in the last office action have been dropped and prosecution of the case on its merits continues.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear from the specification and claims as to what particular aspect of "improving" is intended in claim 1. An amendment to the claim clarifying "improving" would overcome the rejection. If applicant intends to indicate "bowl-life" then the claims should be amended to clearly set forth this feature.

Claims 1, 4-20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for spray or misting the food, does not reasonably provide enablement for any and all amounts of hydration and see page 2, lines 18-19 and page 3, lines 6-8. The specification does not enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The perimeters of the term "improving" is not fully set forth in the specification. Also the extent of hydration contemplated for a good result is not set forth in the specification. One of ordinary skill in the art would have been left to guess what is meant by the recitation "over-hydrated" in describing what too much water is. Also there are no examples in the specification to show an improved cereal or an improved potato chip or an improved freeze-dried product. Surely it would have not required too much experimentation to show one or two examples of the better product relative to the unimproved one. Also because the specification is directed to three different results that occur from the same process, applicant should have not been to hard pressed to illustrate the effects of all three inventions by examples that include

the process that leads to improved bowl-life in cereals, and the process that leads to reduced friability in potato chips and freeze-dried foods and the process that leads to improved shelf-life in nuts. Without some comparative example, the claims merely suggest a process wherein a consumer leaves his cereal out in the rain and then that it tastes better when he consumes it when it on a sunny day. The terms bowl-life and friability are not defined well enough in the specification at page 4 for one of ordinary skill in the art, who relies on the written word. "Bowl-life" depends upon the meaning of the phrase "unappetizingly soggy", which is a subjective determination that has no tested support in the specification and examples. The term "friability" depends upon the meaning of the phrase "the tendency of a composition to crumble or break". Surely some examples of treated and non-treated product could have aided in demonstrating this property. These tests are described in the specification at page 7 but no actual tests were done.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey (2,761,781).

Bailey discloses a method of making nut kernels friable. Here nuts are treated with water at a temperature of 32-120F (column 2, line 49) and then dried. The claims appear to differ from the reference in the suggestion that the product is a potato chip or a freeze-dried food. But the same acts in the same relationship are seen to produce the same result. Applicant has drawn equivalence among the products treated in his invention by virtue of their description in the same application and by his traversal of the restriction requirement.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21, 23, 24 and 31 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gorang (6,572,907) and see the

abstract and figure 1 and column 2, lines 13-18 column 5, lines 44-58.

Claims 22, 25-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden

CAROLYN PADEN 9-25-03
PRIMARY EXAMINER
GROUP ~~1300~~ 1761